

June 14, 2006

Mr. Kenneth Wade
Project Manager
Office of Nuclear Energy (NE-30)
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

SUBJECT: Standby Support for Certain Nuclear Plant Delays
(71 Fed. Reg. 28200, May 15, 2006)

Dear Mr. Wade:

Constellation Energy Group, Inc. ("Constellation") appreciates the opportunity to provide comments on the Interim Final Rule ("Interim Rule") published by the Department of Energy (71 Fed. Reg. 28200, May 15, 2006). This Interim Rule implements Section 638 of the Energy Policy Act of 2005, which authorizes the Secretary of Energy to enter into Standby Support Contracts with sponsors of advanced nuclear power facilities to provide risk insurance for certain delays attributed to the regulatory process or litigation.

Constellation is a member of the Nuclear Energy Institute ("NEI") and of NEI's New Plant Oversight Committee. We are an industry leader in the effort to develop and deploy a standardized fleet of new nuclear power plants in North America. Accordingly, we fully endorse the comments provided by NEI, on behalf of the nuclear energy industry, on the Interim Rule.

The Standby Support Contracts and other incentives provided in the Energy Policy Act are critical to our ability to develop and deploy new nuclear power plants. We look forward to continuing to work with the Department of Energy, the NRC and others on implementation of the advanced nuclear facilities related provisions in the Energy Policy Act, such as the Section 638 Standby Support that is the subject of the Department's Interim Rule.

General

Constellation commends the Department for having made considerable progress in developing a regulatory framework to implement the complex provisions of Section 638. In particular, we support the Department's two-step approach for entering into a Conditional Agreement and then a Standby Support Contract. We also support the Department's two-step approach to claims administration with early determination with respect to the occurrence of a covered event followed by the claim determination for covered costs. Constellation also recognizes that the Department was responsive to the comments it received through the Notice of Inquiry and workshop process on a number of issues, including with respect to the definition of "commencement of construction" and "advanced nuclear facility." Constellation supports those

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definitions and the Department's discussion thereof in the section-by-section analysis (as well as NEI's comments with respect to clarifying the use of the word "approved" in the definition of "advanced nuclear facility"). We also appreciate the overview section which presented DOE's logic behind the Interim Rule.

However, as noted by NEI, the Interim Rule also has a number of serious flaws. Failure to adequately address these flaws will have serious implications for establishing a workable Standby Support insurance program, for our ability to proceed with current plans to build new nuclear power plants, and for the nuclear industry's efforts to achieve the National benefits that the Administration and Congress intended from this program.

Cost of Program and Need for Standard Form Contract

As stated in the industry comments, the single most important weakness is the Interim Rule's failure to provide any meaningful guidance as to the cost of the Standby Support risk insurance. Constellation urges the Department to move forward expeditiously to work with the Office of Management and Budget, the industry and other interested stakeholders to develop a cost and pricing structure for Standby Support that is standard, fixed and predictable as outlined in the industry comments.

In addition, as noted in the NEI comments and as Constellation urged in its comments to the Notice of Inquiry, an effective program also should include standardized contracts, and such contracts should be developed with public input, should be made available for review and comment in addition to the regulations, and should be finalized well in advance of the time that the first Conditional Agreement is anticipated.

Other Critical Issues

In addition to cost as discussed above and without limiting the importance of any of the other issues or comments identified in the industry submission, Constellation wishes to highlight the following issues as some of the most critical items that need to be corrected in order to achieve a workable program that can be utilized by industry and the financial community to support new nuclear power development:

- Definition of Covered Events – "Litigation" and "Pre-Operational Hearings" are Defined Too Narrowly and Do Not Meet the Legislative Language or Intent.
- Contract Rollover – Unutilized Higher Queue Coverage Should Roll to Lower-Queued Sponsors.
- Coverage and Exclusions – Need Clear Standards of Causation and Burden of Proof.

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- Dispute Resolution – Proposed Provisions Do Not Meet the Needs of Investors and Project Lenders.
- Full Power Operation – Department Fails to Adequately Recognize the Risk to Achieving True Full Power Operation.
- Eligibility After Sponsor Termination – Provisions Restricting Eligibility for Additional Contracts After Sponsor Termination Is Overly Broad Where the Project Has Been Cancelled or Suspended
- Other Costs of Delay – Standby Support Should Cover the Full Costs of Regulatory and Litigation Delay Up to the Statutory Caps.

Finally, with respect to the Department's request for further comment on the issue of whether sponsors should be eligible to participate in multiple loan guarantee or other subsidy programs, Constellation restates its position as contained in its comments to the Notice of Inquiry and consistent with the industry comments:

“There is no statutory language in the Energy Policy Act nor any legislative history indicating any intention by Congress to limit any of those programs if project sponsors participate in more than one program. Accordingly, participation in the different programs established under the Energy Policy Act of 2005 should not limit the eligibility or the amounts that a sponsor can receive under any of these programs. The objective of these programs is to facilitate and encourage the construction and full power operation of new advanced nuclear facilities. The programs provide different types of incentives which are complementary, not exclusive.

In the event that a project obtains standby support coverage under section 638 and a loan guarantee under Title XVII, the cost of the loan guarantee should be adjusted to reflect the reduced risk of default on the underlying debt obligation as a result of the standby support. Adjusting the subsidy cost of the loan guarantee in this circumstance would avoid double counting the risk of regulatory or litigation delay where such risk is covered under a section 638 standby support contract.”

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Conclusion

Constellation looks forward to working with the Department to address these comments and those additional comments contained in the industry submittal to implement a Standby Support program that is effective and to enter into Standby Support Contracts that are “financeable” in order to achieve the objective of reducing the risks associated with certain delays in the advanced nuclear facility licensing process and thereby facilitating the expeditious construction and operation of new advanced nuclear facilities.

Sincerely,

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